



21st Floor
1251 Avenue of the Americas
New York, NY 10020-1104

John M. Magliery
212.603.6444 tel
212.379.5212 fax

johnmagliery@dwt.com

June 13, 2017

By ECF and By Hand

The Honorable Ronnie Abrams
and
The Honorable Edgardo Ramos
United States District Judges
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Re: *Phillip Sullivan, Jr. v. Conde Nast Entertainment LLC*, 17 Civ. 2529 (RA)
Phillip Sullivan, Jr. v. Daily News, L.P., 17 Civ. 3314 (ER)

Dear Judge Abrams and Judge Ramos:

This firm is counsel to the defendants in the above-referenced cases (the “Media Defendants”). We previously wrote to Judge Abrams and the Judges presiding over four other matters brought by plaintiff Phillip Sullivan, Jr., for the purpose of bringing to the Court’s attention that, in our view, these matters are related and ought to be heard before a single Judge. Pursuant to Rule 13(b)(3) of this Court’s Local Rules for the Division of Business Among District Judges (“Rule 13”), the related case with the lowest docket number, to which transfer ought to be made, is pending before Judge Abrams.

Rather than further belabor the record, we enclose our prior application herewith. Given that this sixth action includes another nearly identical complaint, we ask the Court to transfer the *Daily News, L.P.* action for the reasons set forth in our prior letter.

We are grateful for the Court’s consideration of this application.

Respectfully submitted,

Davis Wright Tremaine LLP
Counsel for Defendants

A handwritten signature in black ink, appearing to read 'John M. Magliery'.

John M. Magliery

cc: CK Lee, Esq.
Counsel for Plaintiff Phillip Sullivan, Jr.
4818-7069-8314v.2 -



21st Floor
1251 Avenue of the Americas
New York, NY 10020-1104

John M. Magliery
212.603.6444 tel
212.379.5212 fax

johnmagliery@dwt.com

June 2, 2017

By ECF and By Hand

The Honorable Ronnie Abrams
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Re: *Phillip Sullivan, Jr. v. Conde Nast Entertainment LLC*, 17 Civ. 2529 (RA)
Phillip Sullivan, Jr. v. Vox Media, Inc., 17 Civ. 2581 (PAE)
Phillip Sullivan, Jr. v. Prometheus Global Media LLC, 17 Civ. 2582 (KBF)
Phillip Sullivan, Jr. v. The Slate Group, LLC, 17 Civ. 2897 (AJN)
Phillip Sullivan, Jr. v. American City Business Journals, Inc., 17 Civ. 3316 (KBF)

Dear Judge Abrams:

This firm is counsel to each of the defendants in the above-referenced cases (the “Media Defendants”). We write pursuant to Rule 13(b)(3) of this Court’s Local Rules for the Division of Business Among District Judges (“Rule 13”) to bring the relatedness of these several actions to the Court’s attention and to request the transfer of these cases to a single Judge. As the related case with the lowest docket number is pending before this Court, by rule our application is made to Your Honor.

Each of the five above-captioned cases concerns the same plaintiff making strikingly similar claims against each of the Media Defendants: specifically, a claim that each defendant failed to make their website accessible to deaf and hard of hearing persons by not including closed captioning in live videos on such websites. In each case, the plaintiff allegedly encountered access barriers on the defendants’ websites in or around March and April 2017, which prevented him from fully and equally enjoying the goods and services provided on the sites. (See Compls. at ¶ 38). Thus, the actions concern the same plaintiff, similarly situated defendants, identical causes of action, and substantial overlap of factual and legal issues.

The applicability of the Americans with Disabilities Act (“ADA”) to privately owned websites is a highly unsettled area of the law. The Ninth Circuit Court of Appeals, the only Circuit to have addressed the issue, has held that only where a website is tethered to a physical location must the website meet the ADA’s accessibility requirements. *See Nat’l Fed’n of Blind v. Target Corp.*, 452 F.Supp.2d 946, 956 (N.D. Cal. 2007) (“to the extent that plaintiffs allege

NG-S40TG52V 4815-6983-3545v.1 0099704-000006

The Honorable Ronnie Abrams
United States District Judge June 2, 2017
Page 2

that the inaccessibility of Target.com impedes the full and equal enjoyment of goods and services offered in Target stores, the plaintiffs state a[n] [ADA] claim.”). Other district courts throughout the country have come to disparate conclusions. Moreover, the question of what constitutes an accessible website is also open. In 2015, the United States Department of Justice first proposed rules that required compliance with a certain set of standards promulgated by a private consortium of website designers, the Web Content Access Guidelines 2.0 Level AA, but it withdrew those rules after the comment period and has not proposed new rules since.

Because of all of these uncertainties, there is significant risk that having these cases heard by different judges will subject the parties to conflicting rulings. Additionally, while existing accessibility, nature of operations, number of websites, and underlying website coding may differ between and among the defendants, the Court will likely be able to nevertheless realize efficiencies for both the administration of justice and for the parties in conducting discovery by managing the cases together.

Accordingly, for the reasons set forth herein, pursuant to Rule 13 of the Local Rules, we respectfully request that the Court transfer the five above-captioned cases to this Court, Honorable Ronnie Abrams presiding, as the case with the lowest docket number is currently pending before this Court. As of this letter, none of the Media Defendants have answered or otherwise responded to the complaint; only two of them have even been served. Thus, no prejudice will result from a transfer.

We are grateful for the Court’s consideration of this application.

Respectfully submitted,

Davis Wright Tremaine LLP
Counsel for Defendants



John M. Magliery

cc: Hon. Paul Engelmayer
Hon. Katherine B. Forrest
Hon. Alison J. Nathan
Hon. Edgardo Ramos
United States District Judges

CK Lee, Esq.
Counsel for Plaintiff Phillip Sullivan, Jr.